

**Deposition Designations for:
DAYTON PROUTY
January 14, 2000**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co.
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance
Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal
Belge SA (Orange)**

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in Evidence
AO = Attorney Objection
BE = Best Evidence
Cum. = Cumulative
Ctr = Counter Designation
Ctr-Ctr = Counter-Counter
ET = Expert Testimony
F = Foundation
408 = Violation of FRE 408
H = Hearsay
IH - Incomplete Hypothetical**

**L = Leading
LA = Legal Argument
LC = Legal Conclusion
LPK - Lacks Personal Knowledge
LO = Seeking Legal Opinion
NT = Not Testimony
Obj: = Objection
R = Relevance
S = Speculative
UP = Unfairly Prejudicial under Rule 403
V = Vague**

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CAUSE NO. 26642

JERRY DELL DAVIS, ET AL) IN THE DISTRICT COURT
Plaintiffs)
VS.) MILAM COUNTY, TEXAS
ABLE SUPPLY COMPANY, ET AL)
Defendant) 20TH JUDICIAL DISTRICT

VIDEO ORAL DEPOSITION OF

DR. DAYTON PROUTY

JANUARY 14, 2000

VOLUME 2 OF 2

ORAL AND VIDEOTAPED DEPOSITION OF

DR. DAYTON PROUTY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 14th of January, 2000, from 10:10 a.m. to 12:22 p.m., before OLGA GUTIERREZ, CSR in and for the State of Texas, reported by machine shorthand, at the home of Dr. Dayton Prouty, 241 Whispering Woods, Rockport, Texas pursuant to the Texas Rules of Civil Procedure (and the provisions stated on the record or attached hereto).

* * * * *

EX. PP 118

September 2009 W. R. Grace
Plan Confirmation Hearing

PP 004581

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Libby
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Ctr

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2 (Pages 2 to 5)

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1 (Exhibit Nos. 1 - 4 premarked.)
 2 VIDEOGRAPHER: The time is 10:10.
 3 We're now on record.
 4 DR. DAYTON PROUTY,
 5 having been first duly sworn, testified as follows:
 6 MR. KRAUS: Same agreements from
 7 yesterday.

EXAMINATION

BY MR. KRAUS:

Q. Good morning, sir.

A. Good morning.

Q. Would you state your full name for the jury,
please.

A. Yes. My name is Dayton Louis Prouty.

Q. How old a gentleman are you, sir?

A. I'm 66 years old.

Q. And where do you live?

A. I live in Rockport, Texas.

Q. Are we at your home right now?

A. We're at my home, yes, sir.

Q. Are you employed?

A. No, I'm retired.

Q. What are you retired from?

A. I'm a retired veterinarian.

Q. And when did you retire from your work as a

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veterinarian, Dr. Prouty?

A. Early July of 1999.

Q. And is that appropriate to refer to you as
"Dr. Prouty"? Are veterinarians typically
referred --

A. Yes, that's correct.

Q. Why did you retire in July of 1999,
Dr. Prouty?A. Well, I have not been able to work since
then, because I was operated on and diagnosed with
malignant abdominal mesothelioma caused by asbestos.

Q. Now, sir --

MR. OGDEN: Objection, nonresponsive.

Q. (BY MR. KRAUS) -- what is the cause of this
malignant abdominal mesothelioma?

A. Well, --

MR. OGDEN: Objection, form.

A. -- it's my understanding that cause is
asbestos exposure.Q. (BY MR. KRAUS) All right, sir. And -- and
those are some big words, "malignant abdominal
mesothelioma." Now, you're a -- you're a doctor and
a man of science. For -- for the laypeople on the
jury, would you explain what that is.

MR. OGDEN: Objection, form.

1 A. Well, malignant means it's cancerous.
 2 Abdominal means that it occurs within my abdominal
 3 region, rather than other parts of the body. And
 4 mesothelioma is the type of cancer. And that is what
 5 I have been diagnosed and have been treated for.
 6 Q. (BY MR. KRAUS) Abdomen is that -- the area
 7 of your stomach?

A. The stomach is within the abdomen, yes, sir.

Q. And is this asbestos cancer, mesothelioma,
the cause of your disability?

MR. OGDEN: Objection, form, leading.

A. That's correct.

Q. (BY MR. KRAUS) What is the cause of your
disability, Dr. Prouty?

A. It's mesothelioma.

Q. All right, sir. And we're sitting here
recording your testimony on January 14th, 2000; is
that correct?

A. That's correct.

Q. So, you've been disabled by this cancer for
approximately six months; is that correct?

A. That's correct.

Q. And where exactly is your home here in
Rockport?

A. Well, we live outside of the city in the

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1 county. We live on a 16-acre parcel of live oak
 2 forest.

Q. Do you understand why we are taking your
testimony by videotape here today, Dr. Prouty?

A. Yes, I do.

Q. What's your understanding of that, sir?

A. Because when this goes to trial, I may not
be able to attend the trial for health reasons.

Q. Let's talk a little bit about your family.

Are you married, sir?

A. Yes, I am married.

Q. What's your wife's name?

A. Her name is Bonnie Lou Prouty.

Q. How long have you and Bonnie been married?

A. 42 and a half years.

Q. When did you-all get married?

A. August of 1956.

Q. How did you meet Bonnie?

A. I met her when we were both students at
Michigan State University.Q. So, before you were a veterinarian you knew
your wife?A. We were married before I graduated from
veterinary college.

Q. How would you describe your relationship

3 (Pages 6 to 9)

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1 with Bonnie?
 2 A. A wonderful partnership. Bonnie's my best
 3 friend, has been throughout our marriage.
 4 Q. I take it, she's the only wife you've ever
 5 had.
 6 A. Yes, sir.
 7 Q. Do you and Bonnie have children?
 8 A. We have three sons.
 9 Q. What are their names and ages, Dr. Prouty?
 10 A. Steve is 42, lives in Massachusetts; Danny
 11 41 and lives in Corpus Christi; and David is 39 and
 12 lives in Houston, Texas.
 13 Q. All right. And do you have any grandkids?
 14 A. Yes, we have five grandchildren. We have
 15 three in Massachusetts, two boys and a girl; and we
 16 have two in Houston, a boy and a girl.
 17 Q. And do you see your grandkids regularly,
 18 Dr. Prouty?
 19 A. Yes, we do.
 20 Q. Does that include the ones in Massachusetts?
 21 A. Well, we don't see them as frequently, of
 22 course, as we do the ones in Houston. But we take
 23 turns flying them down here from Massachusetts so we
 24 can spend time with each one individually. We do
 25 that every year.

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1 Q. And give an example of the kinds of things
 2 you do when you fly one of your grandkids down here
 3 to Texas.
 4 A. Well, this year we flew our oldest grandson
 5 down so that he could spend -- he came down the day
 6 after Christmas and stayed until after New Year's
 7 with us.
 8 In the summertime, our eight-year-old
 9 granddaughter, we flew her down. And I couldn't
 10 spend a lot of time with her because of my health,
 11 but this had been planned before I got sick. And we
 12 were able to spend some quality time with her.
 13 In the summer of '98, Andrew was ten
 14 years old at that time and we flew him down and we
 15 took him on a camping trip in the mountains of New
 16 Mexico and spent a week trout fishing with him.
 17 Q. Has that time been important to you in your
 18 life, Dr. Prouty?
 19 A. It's been extremely important. It's quality
 20 time.
 21 Q. Sounds like you have a pretty close family,
 22 sir.
 23 A. We have a very close family.
 24 Q. Let's talk about your background, sir.
 25 When and where were you born?

1 Dr. Prouty?
 2 A. Most of that time he worked for the
 3 Universal Zonolite Company in Detroit and Dearborn.
 4 Q. What did he do for Universal Zonolite
 5 Company in Detroit and Dearborn?
 6 A. He was the general manager in -- of the
 7 Dearborn -- Detroit and Dearborn plants; and then, he
 8 became a regional manager for Universal Zonolite that
 9 included some other factories.
 10 Q. And can you tell the jury what exactly the
 11 Universal Zonolite Company, or as it's later known,
 12 the Zonolite Company, was.
 13 A. Yes. It's a -- a company that manufactures
 14 building materials and supplies from a mineral called
 15 vermiculite. It's used primarily for insulation
 16 purposes.
 17 Q. What is vermicul- -- vermiculite?
 18 MR. SMITH: Objection, form.
 19 A. Vermiculite is a mineral that's mined, that
 20 is mica-like in that it has multiple thin layers.
 21 It's different from mica in that it has water
 22 molecules entrapped in it, so that when it's put into
 23 a high-temperature furnace the water molecules expand
 24 into a -- a gas of water vapor and expands the
 25 vermiculite several times so that it has insulating

4 (Pages 10 to 13)

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1 qualities to it.

2 Q. That process you described about heating up
3 the vermiculite and expanding it, was that a
4 significant part of the business of the Universal
5 Zonolite Company or the plants that your father
6 managed?

7 A. Yes, it was significant.

8 Q. Starting at an early age, were there
9 occasions when you went with your father to his place
10 of work in Detroit and later, Dearborn?

11 A. Oh, yes, frequently I would go with him to
12 work on Saturday mornings.

13 Q. Okay. Well, tell the jury a little but
14 about that, how would that come about and how
15 frequently would you do it and what would you do when
16 you were there.

17 A. Well, I would frequently go once or twice a
18 month on Saturday mornings; and while he worked in
19 the office, I would play around in the plant and the
20 office.

21 Q. All right. You mentioned the plant. Can
22 you give the jury a little bit of an idea what the
23 plant was like at these Zonolite facilities in
24 Detroit and Dearborn.

25 A. Well, the plant would consist of bins where

1 A. Well, I was the youngest, and therefore low
2 man on the totem pole. So, I was a common laborer
3 and had a lot of janitorial duties. And then, I
4 would fill in wherever they needed somebody, whether
5 it was bagging certain of the products or loading
6 tractor trailers or loading boxcars with the bagged
7 finished products.

8 Q. And you did all of those things, basically?

9 A. Yes.

10 Q. Can you describe for the jury what the
11 conditions were like in these different Zonolite
12 facilities, including the ones you visited as a child
13 and the ones you worked in as a teenager.

14 A. Well, --

15 MR. SMITH: Objection, form.

16 A. -- all of them -- Overwhelming adjective
17 that describes them to me is dusty. The most dusty
18 places I've ever been in.

19 Q. (BY MR. KRAUS) How dusty was it? Can you
20 give the jury some examples of how dusty it was in
21 these Zonolite plants.

22 A. Well, yes. At any given time on any
23 horizontal surface, if you'd rub your finger towards
24 the edge of a table, there would be a little
25 waterfall of dust going down the -- The floors would

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1 the raw vermiculite ore, unprocessed ore, was kept.
2 And then, it would also consist of furnace areas
3 where the expansion of the product would occur. And
4 then, it would also consist of the bagging area where
5 the finished product would be put into large paper
6 bags, and then there would be warehouse areas. And
7 then, there would be train track areas, where trains
8 would come in with the raw ore and depart with the
9 finished product.

10 Q. And was it a regular occurrence during your
11 childhood for you to make these trips to the factory
12 or the plant with your father on Saturdays?

13 A. Yes, it was a common occurrence.

14 Q. All right, sir. When you turned 14 years
15 old, did there come a time when you, yourself, became
16 an employee of what was then the Universal Zonolite
17 Company?

18 A. Yes. On -- When I turned 14, they allowed
19 me to come to the Zonolite plant and work on weekends
20 until summer. And then, I worked full time in the
21 summers from the time I was 14 until I went away to
22 college in 1951.

23 Q. When you became an employee at the plant,
24 what were your duties and where did you work in the
25 factory?

1 leave tracks when you walked, it would be so dusty.

2 Q. And I've -- I've mentioned multiple
3 facilities. How many different facilities --
4 Zonolite facilities or -- or locations did Zonolite
5 have in the Detroit and Dearborn area during this
6 period of time from your childhood through high
7 school?

8 A. There were three different facilities.

9 Q. And the one you worked in was where?

10 A. That was the Dearborn facility north of Ford
11 Road.

12 Q. In terms of the dustiness, was there any
13 significant difference in the dustiness in the three
14 different Zonolite facilities that you were in?

15 A. I don't recall that there was a difference.
16 They were all very dusty.

17 Q. And on the occasions when you were in the
18 plant, before you were an employee, when you were
19 there as your father's guest, I guess, for want of a
20 better word, were you welcome in the facility, to
21 your knowledge?

22 A. I pretty much had free run of the facility.

23 Q. You weren't trespassing or anything when you
24 were in there?

25 A. No. I -- I was, of course, invited to go

5 (Pages 14 to 17)

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1 with my father.
 2 Q. And were the plants in operation on Saturday
 3 when you'd be visiting?
 4 A. Oh, yes, they were in operation.
 5 Q. Would you visit with the workers?
 6 A. I became friends of many of the workers.
 7 Q. Were you ever anything but welcome in those
 8 plants?
 9 A. I never felt anything except welcome.
 10 Q. And on those Saturdays as a kid, when you
 11 would be exploring and playing in the plants, what
 12 were the conditions like then?
 13 A. Very dusty. I remember having great fun
 14 drawing pictures with my fingers in the dust. It was
 15 an exciting time for me.
 16 Q. Were you exposed to asbestos in both your
 17 times as a visitor and later, as a worker in the
 18 Zonolite plants in Detroit and Dearborn?
 19 MR. SMITH: Objection, form.
 20 A. Yes, I was always exposed to the dust which
 21 contained asbestos.
 22 Q. (BY MR. KRAUS) Explain for the jury how you
 23 were exposed to asbestos dust in these plants.
 24 A. Well, this dust came from the product that
 25 was being manufactured. And that product, including

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1 the dust, contains asbestos.
 2 Q. Are you speaking of the vermiculite itself
 3 or of the products that they manufactured?
 4 A. Well, they're one and the same. The
 5 vermiculite is the product that comes as raw material
 6 to the plant. It contains asbestos. And as it's
 7 expanded and put into bags, the finished product also
 8 contains asbestos.
 9 Q. Now, among the duties that you had when you
 10 were an employee at the Dearborn plant, did you have
 11 occasion to actually handle bags of raw asbestos
 12 separate from the vermiculite?
 13 A. On many occasions I did.
 14 Q. Okay. Explain how that came about for the
 15 jury, please.
 16 A. One of the products that Zonolite Company
 17 manufactured and sold was called Zonolite high
 18 temperature cement. And I participated in the
 19 manufacturing of that, which involved pouring the
 20 vermiculite product, Portland cement and bags of raw
 21 asbestos fibers into a mixer, which then went into a
 22 hopper and was put into bags as the finished
 23 product.
 24 Q. What were the conditions like when you were
 25 assisting in the mixing of Zonolite high temperature

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1 cement in the plant?
 2 A. It was like a snowstorm of dust.
 3 Q. Do you recall the brand names of the raw
 4 asbestos that you added into the mixer?
 5 A. Yes, there were two brands that we commonly
 6 used. One of them was Johns Manville, and the other
 7 one was -- Oh, I'm having another adult moment here.
 8 Q. Well, we can come back to that later.
 9 A. I think we'll have to.
 10 Q. Okay.
 11 A. I -- I'm sorry. I --
 12 Q. Not a problem.
 13 Now, actually, I think you mentioned
 14 yesterday another brand name, Flintkote. Is that --
 15 A. Flintkote, --
 16 MR. MINTON: Form.
 17 A. -- exactly. I'm sorry, I just couldn't
 18 bring it to mind.
 19 Flintkote was the common brand that we
 20 used.
 21 Q. (BY MR. KRAUS) Okay. Well, Let me restate
 22 because of the objection.
 23 Do you now recall the second brand
 24 that -- of -- of raw asbestos that was used --
 25 A. Yeah.

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1 Q. -- at the plant?
 2 A. The brand was --
 3 MR. MINTON: Objection, form.
 4 A. -- Flintkote.
 5 Q. (BY MR. KRAUS) Now, your father worked, as
 6 I understand it, not in the factory part, but in the
 7 office; is that correct?
 8 A. That's correct.
 9 Q. Okay. Were there occasions when your father
 10 would be in the plant?
 11 A. Oh, yes, on many occasions.
 12 Q. How frequently would your father be in the
 13 plant, in your experience, when you were there?
 14 A. When I was there, he would -- he would come
 15 through the plant daily, sometimes several times a
 16 day.
 17 Q. Now, in times when you weren't working at
 18 the Zonolite plant but your -- you were at the house,
 19 and your dad came home from work, were there
 20 occasions when he was dusty?
 21 MR. SMITH: Objection, leading.
 22 A. That -- He was always dusty when he came
 23 home from work.
 24 Q. (BY MR. KRAUS) Let me rephrase the
 25 question.

6 (Pages 18 to 21)

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1 What was the condition of your father's
2 clothes, the suits he wore to work, when he came home
3 from the plant at the end of the day?

4 A. They were always dusty.

5 Q. Do you believe -- Strike that.

6 Were you in a position to be exposed to
7 dust on your father's clothes at the house after he
8 came home from work?

9 MR. SMITH: Objection, form.

10 A. Yes, very definitely.

11 Q. (BY MR. KRAUS) Did you breathe dust from
12 your father's clothes?

13 A. Had to have, yes.

14 Q. On few or many occasions?

15 A. Daily.

16 Q. Now, the -- the equipment and machinery in
17 the plant, was there other -- was there insulation on
18 the high temperature equipment in the plant?

19 DEFENDANT: Objection, form, leading.

20 A. There were pipes that were covered with
21 insulating material.

22 Q. (BY MR. KRAUS) Can you describe what those
23 pipes looked like and what the material looked like?

24 A. Well, the -- the material that insulated
25 them was in two halves that would fit together over

1 A. Well, the -- the bricks would be taken out
2 and the old mortar taken out; and then, the bricks
3 would be reused, and it would be remortared and put
4 back in.

5 Q. (BY MR. KRAUS) With respect to dust, what
6 were the conditions like when the furnaces were being
7 re-lined at the Zonolite plants?

8 MR. ESPINO: Objection, form.

9 A. It was just an additional source of dust,
10 one of many.

11 Q. (BY MR. KRAUS) Throughout -- And I take it
12 from your testimony, the last time you worked at that
13 plant full time was the summer of 1951.

14 A. Yes, that's correct.

15 Q. Were there other occasions when you were in
16 that plant after you last worked there?

17 A. Oh, yes, on many occasions. When I would
18 come home from college, I would visit my father at
19 the plant. And then, even after I graduated, there
20 were times when I would go to the plant and buy
21 products for my own use in either my home or
22 veterinary clinic.

23 Q. That continue throughout the late 1950s?

24 A. Yes. It continued --

25 Q. In the '60s?

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1 the length of the pipe. And then, it would be
2 clamped or taped at various places to hold it around
3 the pipe.

4 Q. What were the conditions like when that
5 insulating material was disturbed or hit in any way?

6 MS. LOPEZ: Objection, form.

7 A. The insulating material was always covered
8 with dust.

9 Q. (BY MR. KRAUS) All right. And the furnaces
10 that you've mentioned for the expanding of
11 vermiculite, did those furnaces have fire boxes?

12 MR. ESPINO: Objection, form.

13 A. Yes, they had fire boxes that were lined
14 with brick; and then, they had big oil-fired blowers
15 that blew into them.

16 Q. (BY MR. KRAUS) Were there occasions when
17 the fire boxes needed to be re-lined?

18 MR. ESPINO: Objection, form, leading.

19 A. Whenever the furnaces were shut down and
20 cooled off; before they could be started up again,
21 they would have to be re-lined.

22 Q. (BY MR. KRAUS) Can you describe the process
23 of re-lining one of the vermiculite furnaces for the
24 jury?

25 (Mr. Oliveira leaves the depo.)

1 A. It continued as long as my father worked
2 there.

3 Q. Okay. Into the '60s then?

4 A. Yes, that's correct.

5 Q. When you would go to the plant to visit your
6 father, would you have occasion to go back into the
7 factory part of the plant?

8 A. Oh, yes. Many of the workers that I
9 considered my friends still worked there, and I would
10 always go back and greet them.

11 Q. The one occasion where you mentioned where
12 you got products, did you actually go back into the
13 plant and load the products yourself?

14 A. Oh, yes, I did.

15 Q. And what kind of products were they?

16 A. Well, there was two that I recall. One of
17 them was bags of house fill insulation. And then, I
18 picked up a product called Z-Brick for decorating one
19 of my waiting rooms.

20 Q. And the house fill, what was the main
21 ingredient of house fill?

22 A. Well, it was strictly vermiculite insulation
23 from vermiculite.

24 Q. Where did virtually all of the vermiculite
25 used at the Detroit and the Dearborn facilities come

7 (Pages 22 to 25)

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1 from?

2 MR. SMITH: Objection, form.

3 A. The -- the raw product came from Zonolite's
4 mine in Libby, Montana.5 Q. (BY MR. KRAUS) And do you have personal
6 knowledge of -- Have you seen evidence when you were
7 working at the plant that that -- Strike that.8 How did the ore arrive at the Zonolite
9 plant?10 A. It came in boxcars to a railroad siting,
11 where it was unloaded.

12 Q. Separate and apart from -- Strike that.

13 How -- how well was it known where the
14 source of the vermiculite was among employees like
15 yourself of the Zonolite Company?

16 MR. SMITH: Objection, form.

17 A. Frequently when a boxcar would be opened up,
18 there would be graffiti painted on the walls from the
19 workers at the Libby mine, "Welcome, from the Libby
20 people."21 One time it contained Christmas trees
22 for all of the workers at the Dearborn plant from the
23 people from Libby.24 Q. (BY MR. KRAUS) Was it general knowledge at
25 the plant that Libby -- the Libby mine of Zonolite

1 Zonolite Company.

2 Q. Okay. Did that happen at some point during
3 your father's tenure at the company?

4 MR. SMITH: Objection, form.

5 A. Yes, it did.

6 Q. (BY MR. KRAUS) Okay. When did that happen
7 during your father's -- Strike that.8 When, in connection with your father's
9 career -- Can you relate in connection with your
10 father's career the connection between Zonolite and
11 W. R. Grace?

12 MR. SMITH: Objection, form.

13 A. Yes. It was -- it was in the '60s. It was
14 late in his career. It was -- Zonolite Company was
15 acquired by W. R. Grace & Company. He stayed there
16 for a short period of time afterwards, and then he
17 left the company.18 Q. (BY MR. KRAUS) Did anyone from Zonolite
19 ever tell you that the vermiculite from Libby
20 contained asbestos?

21 A. No, sir.

22 Q. Did anyone ever tell you that there was a
23 potential danger associated with handling or working
24 with the vermiculite from the Libby mine?

25 A. No. And to the contrary, it was commonly

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Page 29

1 was the source of your vermiculite?

2 A. It --

3 MR. SMITH: Objection, form.

4 A. It was the source of our vermiculite for the
5 years that I worked there.6 Q. (BY MR. KRAUS) Is there any doubt in your
7 mine about the source of the vermiculite at the
8 Zonolite plant in Dearborn?

9 A. I have --

10 MR. SMITH: Objection, form.

11 A. -- no doubt about it.

12 Q. (BY MR. KRAUS) You have to answer again.

13 A. I have no doubt about it, it was from the
14 Libby, Montana mine.15 Q. During all -- all the time that you spent in
16 the Detroit and Dearborn Zonolite facilities, were
17 you ever provided with any masks or respiratory
18 protection?19 A. Never was provided with any respiratory
20 protection.21 Q. Did anyone from the Zonolite Company or
22 later from -- Or let me ask this: Do you have an
23 understanding about any connection between the
24 Zonolite Company and W. R. Grace?

25 A. I understand that W. R. Grace acquired the

1 referred to as not a health problem because it was
2 inert.

3 Q. Did anyone tell you anything --

4 MR. SMITH: Objection, nonresponsive.

5 Q. (BY MR. KRAUS) -- about the hazards of the
6 dust from the vermiculite that came from Libby?

7 A. No.

8 Q. Now, I think you mentioned your dad left the
9 company in approximately 1967; is that correct?

10 A. Approximately.

11 Q. If your dad -- Strike that.

12 Did your dad ever tell you anything
13 about any potential hazards of working around
14 vermiculite from the Libby mine, or -- or asbestos,
15 for that matter, in the plant?

16 A. No, he never did.

17 Q. If you had known about the hazards
18 associated with working around that vermiculite and
19 the asbestos in that plant, what would you have done?

20 MR. SMITH: Objection, form.

21 A. I would have loved to have known about the
22 hazards, because I certainly would not have worked
23 there if I had been aware of what it could do to me.24 Q. (BY MR. KRAUS) Would your father have
25 allowed you to work in that plant if he was aware of

8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 those hazards?</p> <p>2 MR. SMITH: Objection, form.</p> <p>3 A. There's no way he would have allowed me to</p> <p>4 work there. My father and I had a very close, loving</p> <p>5 relationship. We did many, many things together.</p> <p>6 There's no way he would have allowed me to work there</p> <p>7 if he had known of the health hazards.</p> <p>8 Q. (BY MR. KRAUS) Now, in addition to your</p> <p>9 work at the plant, you've actually used</p> <p>10 asbestos-containing Zonolite products yourself,</p> <p>11 haven't you?</p> <p>12 A. Yes, many times.</p> <p>13 Q. Okay. Give the jury some examples of -- of</p> <p>14 times when you've used asbestos-containing Zonolite</p> <p>15 products.</p> <p>16 A. Well, I've used it many times both in home</p> <p>17 remodeling and in clinic remodeling, veterinary</p> <p>18 clinic remodeling, both in Belleville, Michigan and</p> <p>19 in Corpus Christi, Texas.</p> <p>20 Q. Have you used the high temp cement that you</p> <p>21 described?</p> <p>22 A. I used it in my parents' home. When they</p> <p>23 purchased a new hot water heater, I mixed up the</p> <p>24 Zonolite high temperature cement and padded it around</p> <p>25 to insulate the hot water heater and the hot water</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Let me show you what I've had the Court</p> <p>2 Reporter mark as -- as Prouty Exhibit 1. And,</p> <p>3 Dr. Prouty, this is a -- a report from the Montana</p> <p>4 State Board of Health, entitled "A report on the</p> <p>5 Industrial Hygiene Survey of the Zonolite Company of</p> <p>6 Libby, Montana, August 8th and 9th, 1956." And</p> <p>7 before I hand it to you, I'm going to quote from</p> <p>8 Page 3 of that report, paragraph entitled,</p> <p>9 "Toxicity."</p> <p>10 "A review of the literature indicates</p> <p>11 that vermiculite or the dust from this material is</p> <p>12 not especially toxic and is generally included only</p> <p>13 as a nuisance dust. However, the asbestos dust in</p> <p>14 the dust in the air is of considerable toxicity and</p> <p>15 is a factor in the consideration of reducing</p> <p>16 dustiness in this plant."</p> <p>17 Is that something you would have liked</p> <p>18 to have known when you were working at the Zonolite</p> <p>19 facility?</p> <p>20 A. I would have loved to have known when I</p> <p>21 was -- I wouldn't have been working at the Zonolite</p> <p>22 plant if I would have known that.</p> <p>23 Q. Now, this was 1956, this was after you quit</p> <p>24 working there.</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">Page 31</p> <p>1 pipes that went from the hot water heater until they</p> <p>2 disappeared into the wall.</p> <p>3 Q. Is this the same type of Zonolite high</p> <p>4 temperature cement that you described earlier mixing</p> <p>5 with asbestos?</p> <p>6 A. It's exactly the same products, yes.</p> <p>7 Q. When you mix a bag of Zonolite high</p> <p>8 temperature with water to apply, what are the</p> <p>9 conditions?</p> <p>10 A. Well, I did it in a bucket. And as you</p> <p>11 first add the water, it's a -- very dusty and fluffs</p> <p>12 up. And as -- as you mix it with your hands and add</p> <p>13 the adequate amount of water, it becomes a</p> <p>14 cement-like slurry that you then -- And it has enough</p> <p>15 adhesiveness to it that as you pick it up with your</p> <p>16 hands you can pat it onto a vertical surface and it</p> <p>17 will stick to it.</p> <p>18 Q. All right. And the house fill that you</p> <p>19 mentioned, when you use -- fill up a wall with the</p> <p>20 house fill insulation in its ordinary way of being</p> <p>21 used, what are the conditions like when you're</p> <p>22 working with that product?</p> <p>23 A. Well, you pour it out of these big four</p> <p>24 cubic foot bags. And, of course, it's extremely</p> <p>25 dusty when you do that.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. You were in the plant after 1956; is that</p> <p>2 correct?</p> <p>3 A. Many times.</p> <p>4 Q. Did you see any change in terms of the</p> <p>5 health precautions that were taken in the Dearborn</p> <p>6 plant?</p> <p>7 A. I never saw any changes in the dustiness of</p> <p>8 it.</p> <p>9 Q. This report on Page 2 references that in</p> <p>10 1944, the last study of the plant was made. Would</p> <p>11 you have liked to have known that Zonolite was having</p> <p>12 the Libby, Montana facility studied for dust health</p> <p>13 hazards as early as 1944 before you went to work for</p> <p>14 them?</p> <p>15 A. I would have liked to have had that</p> <p>16 information.</p> <p>17 Q. And this information in this report was not</p> <p>18 information that you had when you worked at Zonolite;</p> <p>19 is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. With respect to the reference on Page 2</p> <p>22 there to a 1944 report, I'm going to hand you what</p> <p>23 the Court Reporter marked as Prouty Exhibit 2.</p> <p>24 An August 2nd, 1944 letter from</p> <p>25 Dr. Kilbourne of the Montana Department of Health to</p>

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1 Mr. John Meyers of the Universal Zonolite Company in
2 Libby, Montana.

3 Dr. Kilbourne writes, "I am forwarding
4 you herewith a copy of the report of a recent visit
5 to your mine and mill by the Division of Industrial
6 Hygiene.

7 It is indeed gratifying to note that
8 you have made such extensive and successful efforts
9 to control the dust hazards inherent in your
10 operations."

11 You see? Did I read that correctly,
12 Dr. Prouty?

13 A. Yes, you did.

14 Q. Would you have liked to have known that
15 there were dust hazards inherent in Zonolite's
16 operations in 1944 and thereafter?

17 A. Yes, I would have.

18 MR. SMITH: Objection, form.

19 Q. (BY MR. KRAUS) Answer again because of the
20 objection.

21 A. I -- I would liked to have had that
22 information at that time.

23 Q. Were there extensive efforts made to control
24 the dust hazards in the Zonolite facility you worked
25 in in Dearborn?

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1 MR. SMITH: Objection, form.

2 A. I never saw any effort made to control dust
3 production at the Dearborn plant.

4 Q. (BY MR. KRAUS) I'm going to show you a
5 newspaper article from 1967 from a Montana
6 newspaper. And I'm going to refer you to the
7 beginning, where it says "Editor" -- the -- the
8 headline of this document -- or this article is
9 "Zonolite gets expert opinion, asbestos production
10 useless." And it begins, "Editor's note: The
11 following article and letters appeared in the June
12 30th, 1927 issue of the Flathead Monitor."

13 Where is Flathead? Do you know where
14 that is?

15 A. It's in Montana.

16 Q. Under the headline, quote, says, "Libby
17 asbestos deposit not commercially valuable." And it
18 is an open letter to the shareholders of the Zonolite
19 Company. "So much publicity has recently" -- "has
20 been recently given the occurrence of amphibole
21 asbestos in the Rainy Creek mining district in which
22 our Zonolite deposit is located."

23 Did I read the highlighted portion
24 correctly, Dr. Prouty?

25 A. Yes, you did.

1 Q. Would you have liked to have known what
2 Zonolite knew, that as early as 1927 they were aware
3 that there was asbestos in the Libby vermiculite?

4 A. I would have liked to have known that.

5 Q. All right, sir. I want to shift gears for a
6 minute and talk about some other potential exposures
7 that you had.

8 Now, you're a do-it-yourselfer, aren't
9 you?

10 A. Yes.

11 Q. Throughout your life, have you engaged in
12 repairs and remodeling of the homes in the veterinary
13 offices where you worked?

14 A. I always did what I could, yes.

15 Q. Have you done joint -- joint compound work
16 yourself?

17 A. Many times.

18 Q. Describe briefly for the jury what that is.

19 A. Well, where two pieces of Sheetrock, the
20 drywall come together and there's a crack, you cover
21 it with the joint compound and then you add paper to
22 it and more joint compound. And you let this process
23 dry, and sand it down until it's smooth and very,
24 very even. And you add more joint compound. You do
25 this two or three times, letting it dry and sanding

1 it in between until you have a surface that's
2 cosmetically smooth enough that you can go ahead and
3 paint it or wallpaper it.

4 Q. What are the conditions like when you're
5 sanding the dry joint compound down?

6 A. It's extremely dusty. You end up white.

7 Q. And what are the conditions like when you're
8 pouring the joint compound in a bucket and mixing it
9 with water?

10 A. Well, it's very dusty until you get it well
11 mixed with the water.

12 Q. Did you breathe the dust from the joint
13 compounds you used in the '50s and the '60s?

14 MR. OGDEN: Objection, form.

15 A. Undoubtedly every time I used it I had to
16 breathe the dust.

17 Q. (BY MR. KRAUS) What years -- what decades
18 do you recall this kind of joint compound work?

19 A. The '50s, the '60s and '70s.

20 Q. And did you breathe the dust from the joint
21 compounds you used in the 1950s and the 1960s and the
22 1970s?

23 MR. OGDEN: Objection, form.

24 A. Every time I used it, I breathed the dust.

25 Q. (BY MR. KRAUS) Now, you don't have a

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1 specific recollection of the names on the bags of the
2 joint compound; is that correct?

3 A. Not for any specific job that I did.

4 Q. Okay. And tell me the names, the brand
5 names that you associate with the joint compound work
6 you've done over the years.

7 MR. OGDEN: Objection, form.

8 A. Well, the various brand names that I
9 remember is being ones that I used were EZ Tex. They
10 were U.S. Gypsum and Gold Bond brand.

11 MR. OGDEN: Objection, nonresponsive.

12 Q. (BY MR. KRAUS) Have you also laid asbestos
13 floor tile?

14 MR. OGDEN: Objection, form.

15 A. Yes, I have.

16 Q. (BY MR. KRAUS) Okay. Have you done tiling
17 work and flooring work in the remodeling that you've
18 done?

19 A. Yes, I did.

20 Q. Okay. What products do you recall using,
21 what brand names of products do you recall using for
22 the floor tiling work that you did?

23 A. The brand name that I recommend using on
24 several occasions was Armstrong tile.

25 Q. And do you recall what type of Armstrong

1 Within about two years we outgrew that
2 facility, and we bought some property in Belleville.
3 It had a home, and it had what had been a garage and
4 had been converted into an apartment. And so, we
5 remodeled that apartment facility into a veterinary
6 clinic.

7 And during the time that we stayed in
8 Belleville, we put additions and enlargements on that
9 veterinary clinic on two different occasions.
10 Developed a very successful practice there.

11 And in 1972, we sold that practice and
12 moved to a -- a city in Michigan's upper peninsula on
13 the shore of Lake Superior, where I moved into a
14 practice with two other veterinarians there. And we
15 had a veterinary practice that I continued in until
16 1976.

17 Q. Now, what's the name of that city where you
18 were from '72 to '76?

19 A. Marquette, Michigan.

20 Q. Why did you move up to the upper peninsula?

21 First off, is that up by Canada?

22 A. Well, yes. It's on the south shore of Lake
23 Superior, and all of the northern shores is
24 Canadian. It's -- it's extremely far north.

25 Q. Why did you move up there?

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1 tile it was?

2 A. They called it Armstrong asbestos floor
3 tile.

4 MR. OGDEN: Objection, nonresponsive.

5 Q. (BY MR. KRAUS) Did you actually lay that
6 tile yourself?

7 A. Yes, I did.

8 Q. Did you have occasions to cut that tile?

9 A. Yes.

10 Q. Did you have occasions to saw that tile?

11 A. Yes.

12 Q. Is there some dust associated with that?

13 A. Some dust.

14 Q. Now, we talked about your graduation from
15 vet school in '57 and -- and -- and your retirement
16 because of your cancer in '99. Can you briefly
17 outline for the jury your career as a veterinarian
18 between 1957 and '99.

19 A. Yes. When I graduated from veterinary
20 school in East Lansing, Michigan, we moved to
21 Belleville, Michigan, where we rented a -- living
22 quarters. And it had a two-car garage next door,
23 which we were allowed to use and clean out and
24 remodel it into a small veterinary clinic. And
25 that's how our practice got started.

1 A. The main reason was because by 1972 Detroit
2 had undergone such social degradation, in my opinion,
3 that I no longer wanted to raise my children in the
4 environment that we found ourselves in. I wanted
5 to -- to get to a -- a better place to raise my
6 children.

7 Q. And why did you -- And where did you go when
8 you left Marquette in the upper peninsula in 1976?

9 A. Well, by that point, we decided we needed to
10 live in a warmer climate and we wanted to be close to
11 water where we could sail, because that had become
12 our hobby. And we picked Corpus Christi, Texas. And
13 when we sold out in Michigan, we moved to Corpus
14 Christi, Texas and developed another small animal
15 practice there.

16 Q. And you were in your 40s at that time?

17 A. Yes, I was 43.

18 Q. Did you have any connection at all with
19 Corpus Christi?

20 A. No, sir, we didn't know a sole there when we
21 moved to Corpus Christi.

22 Q. That must have been a bit of an adventure?

23 A. It was a very big adventure. And -- and it
24 turned out to be a very successful adventure.

25 Q. And you've lived here on the Texas Gulf

11 (Pages 38 to 41)

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1 or that's just the name?

2 A. Just Harold Harris.

3 Q. When you used those commercial carpenters,
4 did they buy the products that were used in the
5 construction or did you buy them?

6 A. I think both. But I can't be specific.

7 Q. Okay. So, you don't know if they would have
8 bought the --

9 A. I don't know if they would have bought all
10 of it or if -- or if I did.

11 Q. And you don't know if they had bought --
12 They could have bought the joint compound, also, you
13 don't -- you can't say one way or the other?

14 A. I can't recall.

15 Q. Okay.

16 MR. SCHREIBER: That's all the
17 questions I have. Thank you.

18 THE WITNESS: Thank you.

19 FURTHER EXAMINATION

20 BY MR. MINTON:

21 Q. Dr. Prouty, Darrell Minton again.

22 Do you recall earlier you had the short
23 memory lapse on identifying the raw asbestos? And I
24 just wanted to ask you one time, given it's been so
25 many years and we did at least have a little memory

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1 lapse, did -- are you absolutely positive that the
2 bag said "Flintkote Mines" on it?

3 A. I don't remember the word "mines" on it.

4 Q. You just remember "Flintkote"?

5 A. Yeah.

6 Q. Did it say incorporated or --

7 A. I don't recall.

8 Q. -- limited or --

9 A. No, i don't.

10 Q. You just remember the word "Flintkote"?

11 A. That's correct.

12 Q. Have you ever heard of any other companies
13 similar to that? Have you ever heard the word
14 "Flintkote" associated with any other company or any
15 other product, any other material?

16 A. Not to my knowledge.

17 Q. Okay.

18 MR. MINTON: Pass the witness.

19 MR. KRAUS: Anybody else?

20 I have a little redirect. I need -- We
21 need to take a quick break.

22 I need to talk to you about something.

23 VIDEOGRAPHER: The time is 12:07.

24 We're going off the record.

25 (Off the record.)

1 VIDEOGRAPHER: The time is 12:15.
2 We're back on record.

3 MR. KRAUS: Dr. Prouty, I just have a
4 few follow-up questions.

5 FURTHER EXAMINATION
6 BY MR. KRAUS:

7 Q. (BY MR. KRAUS) First off, did you on
8 occasion wear asbestos gloves when you were a
9 veterinary student in school?

10 MR. STONE: Object, form. Objection,
11 leading.

12 A. Yes, I did.

13 Q. (BY MR. KRAUS) With respect to the -- the
14 co-workers that you were asked about at the Zonolite
15 plant on cross-examination, there's one co-worker you
16 didn't name; is that correct?

17 A. That's correct.

18 Q. Who's that?

19 A. My brother.

20 Q. And what's his name?

21 A. Donald Prouty.

22 Q. Did Donald work in the summers at the
23 Zonolite plant just like you did?

24 A. Exactly the same. He started a year
25 earlier, because he was a year older. He quit a

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1 year --

2 Q. I'm sorry.

3 A. He quit a year earlier, because he went into
4 the Air Force in the Korean War.

5 Q. Summers of '46 to '50 for Donald?

6 A. That's correct.

7 Q. Did he do essentially what you did?

8 A. Yes, essentially the same job.

9 Q. All right. And you were also asked whether
10 any family members had ever been diagnosed with an
11 asbestos-related disease. Do you recall that?

12 A. Yes, I recall that.

13 Q. Well, let me ask you a slightly different

14 question: Have any of your family members ever, on a
15 medical examination, shown any evidence of asbestos
16 exposure?

17 A. Yes, they have.

18 MR. OGDEN: Objection, form.

19 Q. (BY MR. KRAUS) Can you tell us about that?

20 A. On my father's autopsy report, it was noted
21 that he had asbestos in his lung tissue.

22 Q. How about your brother, Don?

23 A. On radiographic examination of his lungs for
24 a routine physical, it was noted by the radiologist
25 that he has calcified areas in his lungs probably due

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25 (Pages 94 to 97)